C.F. 1001

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2818 OF 2005

PETITIONER Vishal Chopra, son of Late S.N. Chopra, aged 37 years, resident of 283, Priyadarshini Colony Road, Raipur.

VS

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Ministry of Law and Legislative Affairs, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. The Raipur Municipal Corporation, a body corporate constituted under the relevant provisions of C.G. Municipal Corporation Act, through the Commissioner, Municipal Corporation, Malviya Road, Raipur.

R.R. No. 2962/05 Presented by Shri ... dated 30/6/05 RECEIVED COPY 30-6- CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2818 of 2005

Vishal Chopra

-Versus-

State of Chhattisgarh & another

DB: Hon'ble Shri Justice S. R. Nayak, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

Mr. P. Diwakar, Senior Advocate with Mr. Malay Kumar Bhaduri, Advocate for the petitioner.

Mr. V. V. S. Moorty, Deputy Advocate General for the Respondent No.1.

Mr. H. B. Agrawal, Senior Advocate with Miss Sangeeta Mishra, Advocate for the Respondent No.2.

ORAL ORDER

(21st November 2005)

1. In this writ petition filed under Articles 226 and 227 of the Constitution of India amongst other reliefs, the petitioner has sought for writ of mandamus to declare the section 401 of the Chhattisgarh Municipal Corporation Act, 1956 (for short 'the Act') as unconstitutional being ultra vires the Constitution of India. At the time of hearing Mr. Diwakar, learned counsel for the petitioner on instruction from his client submitted that he would not press for the relief of writ of mandamus to declare section 401 of the Act as unconstitutional.

2. In the writ petition, the petitioner has assailed the legality and validity of the notices issued by the Raipur Municipal Corporation/Second respondents herein, dated 31.5.2005 (Annexure P/4) and dated 21.6.2005 (Annexure P/6) and sought for quashing of the same by writ of certiorari. In addition, the petitioner has also sought for a writ

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in the nature of writ of prohibition restraining the respondents authorities, their agents, servants and employees from interfering/intermeddling with the possession of the petitioner or demolishing the construction raised by the petitioner, which is the subject matter of the dispute. Annexure P/4 the notice is issued by the second respondent Municipal Corporation under section 293 (i) (ii) and Section 302 of the Act whereas Annexure P/6 the notice is issued under section 307(3) of the Act.

3. Having perused the pleadings of the parties, we found that the dispute brought before the Court in the present writ petition bristles with disputed question of facts. In order to resolve the lis between the parties, it becomes imperative for an adjudicating forum to permit the parties to lead evidence and tender witnesses for cross examination by the other side. As pointed out and reiterated by the Constitutional courts that the High Courts should not ordinarily undertake the resolution of the disputed questions of fact in a summary proceeding under Article 226 of the Constitution of India. The appropriate forum to decide such disputed questions of fact is a jurisdictional civil Court. By virtue of the interim order passed by this Court the demolition of the subject property has been stayed till date. Since the petitioner has an effective and comprehensive remedy under section 401 of the Act, we think it appropriate to direct him to avail of the remedies under section 401 of the Act by way of a suit provided under Section 401 of the Act. We, however, think that it is just and appropriate to maintain the status quo which obtains as on today for a reasonable further period so as to facilitate the petitioner to work out the legal remedies before the jurisdictional civil Court.

4. In the result, and for the foregoing reasons, we dismiss the writ petition with no order as to costs, however, with liberty to the

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petitioner to workout his legal remedies under section 401 of the Act, if he is so advised. We further direct that the status quo which obtains as on today with regard to the subject property shall be maintained for a further period of two months from today. If such a suit is instituted, we trust the jurisdictional civil court will expedite the trial and dispose of the case as early as possible.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Thakur